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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
No. 95-52

WT Docket No. 95

Amendment of Part 95 of the Commission's Rules to Modify Construction Requirements for Interactive Video and Data Service (IVDS) Licenses

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The Coalition of IVDS Licensees ("Coalition"),¹ in response to the Notice of Proposed Rulemaking, WT Docket No. 95-131, released on August 14, 1995 ("Notice"), hereby submits these Comments in full support of the Commission's proposal to amend Section 95.833(a) of the Commission's Rules to eliminate the one-year construction benchmark for Interactive Video and Data Service ("IVDS") licensees. As the Commission implicitly recognizes, the interests of the public and those of IVDS licensees are inexorably linked, and can be well served through a more flexible regulatory regime, without sacrificing the integrity of the Commission's fundamental policy objectives. Further, the Coalition urges the Commission to adopt the proposed Rule change expeditiously in order to permit IVDS licensees to have sufficient opportunity to alter their plans prior to the scheduled one-year benchmark of January and February of 1996.

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Introduction

Each of the members of the Coalition holds one or more IVDS licenses secured pursuant to the FCC's IVDS auction held on July 28-29, 1995. All of the Coalition members timely submitted their long-form applications (FCC Form 574) and initial down payments. Many of them have participated in Commission rulemakings affecting the IVDS industry.²

In addition, many of Coalition members belong to the IVDS Equipment Coalition, the National Interactive Network and the National Association of IVDS Licensees, organizations conceived to represent the interests of IVDS licensees before the FCC; attract financing and equipment proposals; and explore opportunities for the maximization of the IVDS spectrum. To these ends, the Coalition members have committed substantial resources -- financial and otherwise -- to the initiation, development and construction of IVDS systems.

Discussion

A. ELIMINATION OF THE ONE-YEAR CONSTRUCTION BENCHMARK WOULD BE CONSISTENT WITH COMMISSION OBJECTIVES.

In the Notice, the Commission deemed the one-year construction benchmark "unnecessary". Notice at para. 3. The Coalition suggests that this term actually understates the practical and harmful effect which Section 95.833(a) imposes on IVDS licensees. The one-year benchmark would impede the viability and evolutionary

² See Comments of IVDS Licensees, WT Docket No. 95-47, filed June 26, 1995; Reply Comments of IVDS Licensees, WT Docket No. 95-47, filed July 11, 1995.

development of the IVDS spectrum by causing IVDS licensees to construct "facilities" prior to the development of viable commercial services,. This result would be extremely wasteful and would not serve the public.

More importantly, as the Commission correctly recognizes, the change in the Commission's IVDS licensing procedures mandates the revision of this rule section. Section 95.833(a) was adopted in 1992 when IVDS licenses were specifically proposed to be awarded by lottery, and was intended to discourage lottery participants, which paid little or nothing for their IVDS licenses, from warehousing spectrum. See Report and Order, 7 FCC Rcd 1630 (1992); see also Notice at n.6. Indeed, as the Commission is well aware, the adoption of this rule -- and other rules designed to curb potential abuses and profiteering³ -- follows the Commission's experiences in other services infiltrated by speculators.

Indeed, the Commission acknowledges in the Notice that the first construction benchmark is "unnecessary" where IVDS licenses are awarded pursuant to auctions, through whichy the full market value of IVDS licenses is to be paid. Notice at para 3. Accordingly, with no "profiteering" to be deterred, there is no policy reason to retain the first-year construction benchmark.

Significantly, the Commission has proposed to retain the three- and five-year build-out benchmarks. The Coalition believes that eliminating the first-year benchmark and retaining the other benchmarks strikes an appropriate balance between the licensees'

³ See, e.g., Section 95.819.

rights to intelligently manage their investments and the public's interest in receiving interactive service, on a timely bases.

By eliminating Section 95.833(a), the Commission actually will be expediting quality service to the public. The members of the Coalition have expended substantial resources and committed significant efforts to securing equipment, services and financing, and have discovered that the IVDS industry is, in all respects, in its infancy. Recent technological advances and industry alliances, however, suggest that IVDS could be on the verge of full-scale development if licensees are permitted to stay focused on developing the necessary equipment and content relationships, rather than construct useless facilities.

If IVDS licensees were required to satisfy the ten percent coverage benchmark, they would be forced to expend substantial sums of money on third-rate equipment and services, with little opportunity to obtain financing. Thus, by eliminating the first-year construction benchmark, the Commission will be advancing the development of the IVDS industry by keeping the available resources directed on productive efforts, and thereby ultimately expediting service to the public.

Adoption of the proposed rule change also would be consistent with Commission precedent. In granting the requests of six IVDS licensees for waiver of the first year build-out requirement in its Order of March 13, 1995, the Commision held that it would be unreasonable to require IVDS licensees to meet the current build-out requirements where there was no evidence of speculation or

warehousing. In this case, where the licensees have obligated themselves to pay 100 percent of the value, and have made auction payments to the government, the lack of speculation is manifest. Accordingly, the Commission can be even more sure that the integrity of its policies will be preserved.

B. THE COMMISSION SHOULD MAKE THE PROPOSED RULE CHANGE AS EXPEDITIOUSLY AS POSSIBLE.

For the foregoing reasons, the Commission should eliminate the one-year build-out requirement. However, the effect of this Rule change will be lost unless the Commission acts quickly. IVDS licensees face their respective one-year deadlines in January and February of 1996 -- a scant four months from now. With equipment vendors quoting at least fourteen (14) weeks for delivery, many IVDS licensees are evaluating whether to commit to ordering "license saver" equipment, seek an extension of time, or wait until the Commission acts on the proposal in this docket. As the deadline nears, these options narrow such that the elimination of the one-year benchmark could occur too close to the deadline to have any positive effect. At that point, licensees will have either ordered equipment (without any plausible service plan) or prepared and filed extension requests. Accordingly, if this rule change is to be anything but a Pyrrhic victory for the IVDS industry, the change must occur almost immediately.

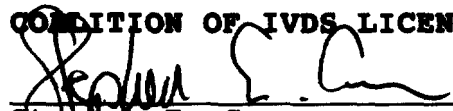
Conclusion

The Coalition enthusiastically supports the Commission's proposal to eliminate Section 95.833(a), and urges the expeditious amendment of the rules to effectuate that result.

Respectfully submitted,

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